Thomas Dent, Dr. in Divinity, Appell^ant,

Sir *William Buck*, Barronet,
William Walker, al's *Walcott*,
Edward Kitkchin,
John Young,
Thomas Sheppherd,

Jos. Smith,
John Garland,
Timothy Lacey,
Richard Rastals,
John Eagle,

} Respond^ents.

The Respondents C A S E.

1687, Vicar.. THat the Appellant being instituted Vicar of the Parish of *Lenton* in the County of *Lincoln*, in the Year 1687, and the Respondent being seized in Fee of the Mannor or Lordship of *Hanby Grange*, with divers Lands thereto belonging; two Years after the Doctor came into the said Parish he began to be troublesom with his Neighbours, and in *Michaelmas*-Term, 1689, exhibited his Bill in the Court of Exchequer, for Tithes in kind, against the Respondent, Sir *William Buck*: To which Bill, in *Hillary*-Term following, he put in his Answer, and prescribed to be discharged of all Tithes in kind, by the payment of 20 *s.* a Year to the several Vicars his Predecessors.

Bill in 1689.

That the Appellant desiring an Accommodation, at his request the Respondent agreed by a Writing drawn, indented and ingrossed by the Appellant himself, to give him 10 *l. per Annum*, as a voluntary free Gift every Year at *Easter*, besides the 20 *s.* a Year; and the Appellant then agreed not to disturb Sir *William Buck* for any Tithes, and accordingly receiv'd the same for several Years, and gave Receipts for the 20 *s.* a Year, as all his Predecessors had done before him.

Mich'- Term, 1699, a second Bill. That the Appellant exhibited a second Bill against Sir *William Buck* and his Tenants, the Respondents, for Tithes in kind, suggesting he was drawn into the said Agreement; and the Respondent, Sir *William Buck*, insisted upon the said *Modus*, which is by Prescription; and the said Cause being heard the 21th of *February*, 1700, the Appellant's Bill was dismist as to the Tithes of *Hanby Grange*, and referred to a Tryal, Whether *Grange Leas* was Part of *Hanby Grange*, or not? And afterwards the Appellant petitioned for a Re-hearing, which came on the 6th of *December*, 1701; when the Court declared they did abide by their Judgment given upon the former Hearing, and saw no cause to depart from the same; and the Appellant then in Court refusing to go to a Tryal, Whether *Grange Leas* was Part of *Hanby Grange*, or not, according to the former Direction? and wholly waving the same, it was then ordered his Bill should be dismiss'd with Costs, without prejudice of the Appellants Demand of 10 *l. per Annum*, payable to him according to his said Agreement.

21 *Feb.* 1700, the first Hearing.

6 *Decemb'* 1701, Re-hearing.

19 *Martii*, 1701, Heard before the Lords. That the Appellant's being dissatisfied with the said Decree, appealed to the House of Lords, who adjudged, That the said Decree made in the Court of Exchequer, and the Affirmation thereof, should be reversed; and the said Agreement therein complained of was thereby set aside; and afterwards the Appellant petitioning, That it was omitted in the Judgment, That the Court of Exchequer should proceed to relieve the Appellant; and upon hearing Council on both sides it was ordered, That these Words should be added to the Judgment given the 19th then instant, *viz. That the Court of Exchequer do proceed to hear and determine the Cause, as to the Right of Tithes in question, notwithstanding the Agreement.*

27 *Martii*, 1701, order'd by the Lords.

6 *Julii*, 1702. That the said Cause came to be reheard in the Exchequer, by Vertue of the said Orders, and the Appellant then producing two *Terriers* which he would have read at the first Hearing and Rehearing, *viz.* The Examination of Mr. *Thomas Peachell*, who was examined after Publication had past in this Cause to prove the same, both of them said to be had out of the Register-Office at *Lincoln*, the one dated *Anno* 1577, th' other said to be a Parchment *Terrier* out of the same Office, touching *Lavington Vicaridge*, dated *Anno* 1634. and of which the Respondent had no Notice, till the Day before the first Hearing: As also a pretended Tythe-Book of one Mr. *Loddington*, a former Vicar, not produced till the Rehearing, wherein are several Leaves torn out, and new ones put in, and Interlineations of the Appellant's Hand-writing, which was not proved in the Cause, till the 16 Day of *June* last past, the said *Terriers* and Book were not allowed to be given in Evidence at the Hearing before your Lordships, and at the last Rehearing now complained of. But after long Debate of the Matter, and hearing Councel on both sides, the said Barons did refer the Matter of the said *Modus*, insisted on by the Respondent Sir *William Buck*, to Tryal at Law, upon these Issues, Whether there be a *Modus* of 20 *s.* a Year payable to the Appellant in Lieu of the Tithes of *Hanby Grange* and the Lands thereto belonging or not. And whether *Grange Leas* be part of *Hanby Grange*, Which Issues were to be tryed the next Assizes at *Lincoln*: Which said Order complained of by the Appellant's now Petition of Appeal, is as these Respondents conceive and are advised, made upon just Grounds and good Reason, and agreeable to the standing Rules of Justice and Equity; the said Matters being more properly and more usually tryed by a Jury at Law, upon Evidence given *Vivâ Voce*, than by Depositions of Witnesses in a Court of Equity.

Parcel or not Parcel of a Mannor.

That forasmuch as this Cause hath received a Hearing and two Rehearings before the Barons of the Exchequer, and two Appeals already in this House, and now praying a Decree by this his third Appeal, That Tithes may be decreed, together with his Costs, and the Issues, directed as to the *Modus* and *Grange Leas*: Whether Part of *Hanby Grange* may be stayed; which Issues were never denied to be tried, where-ever contested, being Matter properly determinable at Law.

These Respondents therefore humbly hope, that the said Order of the sixth of July *last, shall be performed and obeyed, and the Appeal dismist with Cost.*

JOHN HAWLES.